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No. 84-363

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1984

NORTHEAST BANCORP., INC., UNION TRUST COMPANY and CITICORP, PETITIONERS

v.

THE BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, ET AL., RESPONDENTS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE and BRIEF FOR U.S. SENATORS Alphonse M. D'Amato Daniel P. Moynihan and U.S. REPRESENTATIVES Hamilton Fish, Robert Garcia, John J. LaFalce, Stanley L. Lundine, Charles E. Schumer, and George C. Wortley as AMICI CURIAE IN SUPPORT OF PETITIONERS

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February 21, 1985

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Pursuant to Rule 36.3 of the Rules of this Court, U.S. SENATORS Alphonse M. D'Amato Daniel P. Moynihan and U.S. REPRESENTATIVES Hamilton Fish, Robert Garcia, John J. LaFalce, Stanley L. Lundine, Charles E. Schumer, and George C. Wortley respectfully seek leave to file the at-

tached brief as amici curiae in support of petitioners. The consent of counsel for petitioners has been granted; the consent of counsel for respondents has been withheld. Copies of the correspondence pertaining to consent have been filed with the Clerk of this Court.

All amici are Members of Congress from the State of New York. Amici share a deep concern over the court of appeals' misconstruction of the Douglas Amendment, 12 U.S. 1842(d), a misconstruction which has opened the door to discriminatory state legislation that effectively balkanizes the banking industry along regional lines and which permits groups of states to form confederations that boycott commerce emanating from disfavored states. In this case, the State of New York bears the brunt of such discriminatory legislation. Amici have a strong interest in urging this Court to reverse an erron-

eous construction of a federal statute which exposes their own state to a pernicious form of economic discrimination.

As members of Congress, amici have an additional interest in this case. The decisions of this Court construing the Commerce Clause and the Compact Clause establish that reciprocal, regionally-discriminatory state legislation, injurious to sister states, may not be sustained unless clearly approved by Congress. In this case, Congress has never approved the discriminatory state laws at issue, and certainly has never given its sanction to multi-state compacts which boycott disfavored jurisdictions. The purposes of the Commerce and Compact Clauses and the prerogatives of Congress would be gravely undermined if congressional approval of discriminatory state laws could be "inferred" by courts from general language such as that contained in the Douglas Amendment.

The attached amicus brief should provide a useful supplement to the presentation of petitioners and afford the Court additional information concerning the practical realities surrounding congressional review and approval of legislation that discriminates against interstate commerce.

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QUESTIONS PRESENTED

This brief amicus curiae will address the following questions:

1. Has Congress, in the Douglas Amendment, authorized confederations of states to establish interstate banking regions through multi-state compacts that permit full service banking within the region by bank holding companies located there, but boycott bank holding companies located in states outside the region?

2. Absent clear authorization by Congress, does such balkanization of interstate banking through regional compacts violate the Commerce Clause and the Compact Clause of the Constituion?

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INTEREST OF AMICI CURIAE

As explained in the foregoing motion, amici have a direct and substantial interest

in the outcome of this case. Their home state, the State of New York, is the target of the discriminatory boycott challenged in this litigation. In addition, the court of appeals' implication of congressional approval in this case has effectively prevented legislators from New York from taking action in Congress to prevent a form of discrimination that is harmful to their home state and to the economic welfare of the Nation. Amici, as Members of Congress, have a deep interest in reaffirming the need for review and approval by the national legislature of state statutes that discriminate against commerce deriving from disfavored parts of the United States.

STATEMENT

1. At issue in this case is the constitutionality of reciprocal, regionally-restrictive banking laws enacted by Massachusetts in 1982 (Mass. Gen. Laws Ann. ch.

167A, Sec. 2 (West 1971 & Supp. 1984)) and by Connecticut in 1983 (1983 Conn. Act 83-411). Those laws, adopted as part of a multi-state compact in the New England area (see Pet. App. A51-A52), permit bank holding companies within New England to provide full-service banking anywhere within that region, but deny that right to bank holding companies located elsewhere. In particular, financial institutions in the State of New York -- many of which are located only a few miles from New England -- are barred from entering the designated multi-state region.

The Connecticut and Massachusetts statutes have a discriminatory purpose as well as a discriminatory effect. The principal sponsor of the Massachusetts statute, Senator John A. Brennan, Jr., readily acknowledged that the purpose of the regional statutes was to exclude the money center banks in New York (Pet. App. A189):

> "I just didn't think it would be good for the state if the big money center banks came in here."

The legislative history shows that the Massachusetts statute was intended (id. at A150):

> "to establish in the General Laws the necessary authority for a regional, New England banking system * * * [and] to ensure that only New England based financial institutions can avail themselves of this authority."

When Connecticut enacted a parallel statute a few months later, Connecticut legislators specifically referred to "the large New York banks" and the "fear that they would come into Connecticut" (Pet. App. A159-A160). They intended to give "our banks in Connecticut" an opportunity to "merge and consolidate and purchase some of the New England banks" without competition from New York banking institutions (id. at A157-A160).

2. While the advocates of regionally restrictive banking legislation succeeded in securing enactment of laws in New England

designed to "set up a real New England system" (Pet. App. A162-A168, A189), they never have persuaded Congress to accept their proposals. Although bills have been introduced in Congress that would authorize regionally discriminatory banking legislation, those bills have failed of enactment (id. at A190-A191, A205-A207). Specifically, during its most recent session, Congress declined to enact S. 2851, 98th Cong., 2d Sess. (1984), which would have empowered states to enter into discriminatory regional compacts. Chairman Peter W. Rodino explained to Speaker Thomas P. O'Neill, Jr., that such legislation raises "Constitutional questions requiring careful consideration" and that congressional endorsement should not be granted without "careful scrutiny." Letter of September 14, 1984, appended to reply brief in support of petition for certiorari, (A1-A3).

3. Despite this lack of congressional approval, the proponents of the bank acquisitions at issue in this case contended before the Board of Governors that implicit authorization for regionally discriminatory state laws might be found in the general language of the Douglas Amendment, 12 U.S.C. 1842(d), which forbids the Board to approve the acquisition of a local bank by an out-of-state bank holding company "unless the acquisition of such * * * a State bank by an out-of-State bank holding company is specifically authorized by the statute laws of the State in which such bank is located."

In reviewing this argument, the Board found (Pet. App. A65) that "the Douglas Amendment does not appear <u>on its face</u> to authorize discrimination by Connecticut in favor of its own residents and those of Massachusetts and other New England States

* * *, but against all other states." The Board also acknowledged that the "general" language of the Douglas Amendment "does not appear to meet the stringent test of explicitness laid down by the Supreme Court" (id.). Turning to the legislative history, the Board likewise found "no discussion of the power to discriminate among out-of-state entrants" (id. at A66). The Board further acknowledged that, absent congressional approval, the discriminatory state laws at issue in this case would violate well-established constitutional principles articulated by this Court (id. at A58).

Notwithstanding the absence of any statutory language or legislative history establishing a congressional intent to permit discriminatory state laws, the Board nonetheless declined to invalidate those state laws. The Board felt incapable of invalidating them

absent "clear and unequivocal evidence of the inconsistency of the state law with the federal Constitution" (Pet. App. A40). The Board sustained the statutes in reliance on the general provisions of the Douglas Amendment which, it believed, manifested Congress' deference to the states (id. at A41, A50-A52, A55-A71). The Board referred to the Douglas Amendment as a general "renunciation" of federal interest in regulating interstate bank acquisitions which implicitly permitted the challenged statutes enacted by Connecticut and Massachusetts (id. at A52).

4. The court of appeals affirmed the Board's ruling and expressly sustained the constitutionality of the discriminatory Massachusetts and Connecticut statutes. The court did not question the discriminatory impact of the state laws, or deny that they were enacted as part of an exclusionary

multi-state compact which boycotted the State of New York. Deferring to the Board, which previously had deferred to the courts (Pet. App. A67, A195), the court of appeals concluded that the discriminatory laws could be sustained under the Douglas Amendment, which the court believed to be a relinquishment of all federal interest in the subject matter (id. at A29). The court disposed of petitioners' Commerce Clause challenge on the theory that the discriminatory laws had been implicitly "authorized" by Congress (id. at A31). And it found the challenged laws to be consistent with the Compact Clause on the theory that the compact in this case did not "increase the political power of the New England States or encroach upon or interfere with the just supremacy of the United States" (id. at A32).

INTRODUCTION AND SUMMARY OF ARGUMENT

I.

The court of appeals has improperly relied upon general language in the Douglas Amendment, 12 U.S.C. 1842(d), as an implicit authorization of state legislation that discriminates against interstate commerce emanating from disfavored states such as the State of New York. This approach to statutory construction violates a fundamental principle of constitutional law declared by this Court in its Commerce Clause decisions. A congressional purpose to permit discrimination against interstate commerce may be found by federal courts only if that purpose is "express" (Sporhase v. Nebraska, 458 U.S. 941, 960 (1982)), or "unmistakably clear" (South-Central Timber Development, Inc. v. Wunnicke, ___ U.S. ___, 104 S.Ct. 2237, 2242 (1984)). This constitutional requirement guarantees

that before a state is subjected to discriminatory legislation by sister states, the national legislature will have focused on the issue, debated the wisdom of imposing discrimination, and approved the result. It effectively secures the right of representatives of the state which is subjected to discrimination to participate in the debate and ultimate decision, and thereby represent the interests of their own constituents. "A rule requiring a clear expression of approval by Congress ensures that there is, in fact, such a collective decision." Wunnicke, supra, 104 S. Ct. at 2243.

In this case, as the Board expressly found, the language of the Douglas Amendment and its legislative history are devoid of any evidence that Congress meant to permit discrimination among states in allowing interstate bank acquisitions. Thus, the discrimi-

nation inflicted on New York in this case is the work of the New England States alone -- and not the national legislature. Contrary to established Commerce Clause principles, the "unrepresented interests" of the State of New York have been injured by discriminatory laws enacted by other states without the supervision or approval of Congress. Wunnicke, supra, 104 S.Ct. at 2243.

II.

The decision of the court of appeals also clashes with settled principles declared by this Court under the Compact Clause. The Compact Clause requires prior congressional approval if a multi-state compact, such as the New England Compact, "'project[s] a new presence onto the federal system [or] alter[s] any state's basic sphere of authority.'" U.S. Steel Corp. v. Multistate Tax Commission, 434 U.S. 452, 469 n. 21 (1978). "This provi-

sion is obviously intended to guard the rights and interests of the other States, and to prevent any compact or agreement between any two States, which might affect injuriously the interests of the others. And the right and duty to protect these interests is vested in the general government." Florida v. Georgia, 58 U.S. (17 How.) 478, 494 (1854).

The multi-state compact at issue in this case plainly projects a new presence onto the federal system, and directly and substantially prejudices the economic interests of excluded states such as the State of New York. The compact poses a serious danger to the welfare of the federal system: it threatens to substitute antagonism and retaliation for the harmonious union of co-equal states contemplated by the Founding Fathers.

Congress has never approved multi-state compacts of the kind at issue in this case.

General deference to state legislation in the Douglas Amendment in 1956 does not constitute congressional consent to regionally discriminatory compacts fashioned 25 years later in a manner never envisioned. In view of the overriding importance of the issue to national economic policy, and in view of Congress' unwillingness to endorse regionally discriminatory state laws in its recent sessions, the New England compact cannot withstand scrutiny under the Compact Clause.

ARGUMENT

I. THE MASSACHUSETTS AND CONNECTICUT REGIONAL BANKING STATUTES DISCRIMINATE AGAINST INTERSTATE COMMERCE WITHOUT CONGRESSIONAL APPROVAL AND THEY THEREFORE ARE INVALID UNDER THE COMMERCE CLAUSE.

The Board correctly pointed out in this case (Pet. App. A55) that "[a]bsent congressional authorization of [the regionally restrictive state laws] in the Douglas Amend-

ment, it appears that [they] would be inconsistent with the standards for state action under the Commerce Clause as established by the Supreme Court." The Solicitor General has agreed with that analysis: "In the absence of congressional authorization, there is little doubt that state restrictions on interstate banking such as the ones in this case would run afoul of the Commerce Clause." Brief in Opposition at 5. Thus, the dispositive issue under the Commerce Clause is whether Congress has clearly authorized discriminatory state legislation of the kind at issue here.

Proper analysis of this question is of enormous practical importance to the relationship between the States in our Union, and to the relationship between Congress and the federal judiciary. If federal courts may "imply" congressional approval of discriminatory multi-state arrangments from the general

language of federal statutes aimed at different objectives, then the common market guaranteed by the Framers of the Constitution under the Commerce Clause will be exposed to hazards beyond the power of Congress adequately to control. This would constitute a substantial threat not only to the welfare of states subject to discrimination, but also to the citizens of all states who benefit from the vital national economy protected by the Commerce Clause.

This Court repeatedly has expressed the principle in its Commerce Clause decisions that economic protectionism and regional preferences are forbidden unless specifically reviewed and approved by Congress in the exercise of its plenary power over interstate commerce. Congress must have an opportunity to carefully consider and analyze the policy issues raised when regional discrimination is proposed. In the present case, the genera-

lized language of the Douglas Amendment -- which merely empowers individual states "to permit expansion of banking across state lines where it otherwise would be federally prohibited" (Lewis v. BT Investment Managers, Inc., 447 U.S. 27, 47 (1980)) -- cannot reasonably be viewed as expressing advance approval by Congress of the serious form of discrimination here at issue. The language of the statute does not refer to discrimination against disfavored states or multi-state boycotts; the legislative history contains not a word of discussion on this subject; and no purpose of the statute would be served by construing it as a grant of power to states to partition the Nation into preferred and boycotted regions.

If the language of the Douglas Amendment were construed to approve such discrimination sub silentio, the consequence would be that congressmen, whose responsibility it is to carefully consider the economic implications

of such discrimination, would be stripped of any meaningful opportunity to exercise that responsibility. Congressmen lacking any notice that proposed legislation would countenance discrimination otherwise violative of the Commerce Clause would not be able to serve their intended function as protectors of the Nation's common market, and representatives of disfavored jurisdictions, such as the State of New York, would not be able to protest and debate proposed discriminatory legislation.

This Court's decisions construing the Commerce Clause leave no doubt that congressional "authorization" cannot be implied from general language such as that contained in the Douglas Amendment. The Douglas Amendment merely empowers individual states to lift the ban on interstate bank acquisitions that otherwise would exist: the Board is authorized to approve an interstate acquisition

only when ". . . the acquisition * * * is specifically authorized by the statute laws of the State in which such bank is located * * *." 12 U.S.C. 1842(d). While this language defers to state law on the issue whether the ban on interstate acquisitions should be lifted, it in nc manner countenances discrimination among states or the creation of categories of preferred and boycotted jurisdictions.

That the general language of the Douglas Amendment does not support an inference of congressional authorization is evident from this Court's decision in Sporhase v. Nebraska, 458 U.S. 941, 958-60 (1982). In that case, the proponents of discriminatory state laws sought to justify them under the Commerce Clause based on general language in federal legislation deferring to state laws and providing that "the Secretary of the Interior,

in carrying out the provisions of this Act, shall proceed in conformity with such laws." They argued that this deference to and reliance upon "state law" in the federal administrative scheme constituted consent to discriminatory criteria incorporated within those state laws. This Court flatly rejected that contention.

In words that apply directly here, this Court held that congressional approval of discriminatory state laws must be clear and express and that general deference to state laws does not imply approval of state laws that otherwise would violate the Commerce Clause (id. at 959-60):

> "Although the [federal] statutes * * * demonstrate Congress' deference to state water law, they do not indicate that Congress wished to remove federal constitutional constraints on such laws. The negative implications of the Commerce Clause, like the mandates of the Fourteenth Amendment, are ingredients of the valid state law to which Congress

> has deferred. Neither the fact that Congress has not chosen to create a federal water law to govern water rights involved in federal projects, nor the fact that Congress has been willing to let the States settle their differences over water rights through mutual agreement, constitutes persuasive evidence that Congress consented to the unilateral imposition of unreasonable burdens on commerce. In the instances in which we have found such consent, Congress' 'intent and policy' to sustain state legislation from attack under the Commerce Clause was 'expressly stated.'"

This Court also has explained that the requirement of unambiguous congressional approval of discriminatory state laws is an essential element in our constitutional system of federal government. As the Court pointed out in South-Central Timber Development, Inc. v. Wunnicke, ___ U.S. ___, 104 S. Ct. 2237, 2242-43 (1984), congressional authorization "must be unmistakably clear" if discriminatory state legislation is to be immune from the traditional strictures of the Commerce Clause.

The Court added that the "unmistakable" intent requirement assures that Congress -- the protector of all of the States -- has actually focused on the policy issues implicit in proposed discriminatory statutes (id. at 2243):

> "[W]hen Congress acts, all segments of the country are represented and there is significantly less danger that one State will be in a position to exploit others. Furthermore, if a State is in such a position, the decision to allow it is a collective one. A rule requiring a clear expression of approval by Congress ensures that there is, in fact, such a collective decision and reduces significantly the risk that unrepresented interests will be adversely affected by restraints on commerce."

These considerations apply directly here, and they compel the conclusion that the court of appeals erred in inferring congressional authorization to discriminate from the general language of the Douglas Amendment. In this case, there is no "assurance" that Congress

has made a "collective decision" to approve discrimination against boycotted states. Quite to the contrary, the language and legislative history of the Douglas Amendment are utterly barren of any indication that Congress focused upon and consented to such discrimination. Thus, the discriminatory boycott has gone into effect with review and approval only by the New England states themselves -- and New York's "unrepresented interests" have obtained no protection whatsoever from the national legislature.

This Court should adhere to the requirement of "unmistakable clarity" in Commerce Clause cases, and should continue to place the burden of demonstrating congressional consent upon the proponents of discriminatory state laws. In the absence of such a requirement, there can be no assurance that Congress will have focused upon and approved discriminatory

arrangements of vital concern to all States in the Union.

Application of the foregoing principles clearly establishes the error in the decision of the court of appeals. The Board correctly found that the language and history of the Douglas Amendment provide no evidence that Congress actually considered and approved discrimination by confederations of states against interstate commerce stemming from other states. In these circumstances, the reciprocal, regionally-restrictive statutes enacted by Connecticut and Massachusetts are invalid under the Commerce Clause.*/

*/ In addition to the absence of explicit congressional consent to these discriminatory state statutes, it is evident that the state statutes clash with the policies of the Douglas Amendment. The Douglas Amendment treats all states alike: it permits each state to preserve local control over banks within its borders, or to lift the ban on interstate acquisitions. The New England

(Footnote continued on next page.)

II. THE MASSACHUSETTS AND CONNECTICUT BANKING STATUTES ARE COMPONENTS OF A MULTI-STATE COMPACT WHICH INJURES SISTER STATES WITHOUT CONGRESSIONAL APPROVAL AND THEY THEREFORE ARE INVALID UNDER THE COMPACT CLAUSE.

The harmfulness of the Connecticut and Massachusetts statutes at issue in this case is increased greatly by the fact that they do not stand alone. They are part of a multi-state compact expressly designed by New England legislators to increase the economic

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(Footnote continued from previous page.)

statutes, by contrast, divide the nation into preferred and boycotted states.

Moreover, in a case such as this, it is totally unavailing to claim that state laws survive scrutiny under the Commerce Clause because they are generally consistent with the policies of the Douglas Amendment. As this Court explained in Wunnicke, "[t]he fact that the state policy in this case appears to be consistent with federal policy -- or even that state policy furthers the goals we might believe that Congress had in mind -- is an insufficient indicium of Congressional intent." 104 S.Ct. at 2243.

strength of institutions in their own geographical region at the direct expense of institutions in boycotted states, such as the State of New York. As explained in the petition for certiorari (pages 9-15), regionally-restrictive compacts are now emerging throughout the United States, all of which exclude the same disfavored "money center" states. The Solicitor General also has referred to this balkanization process in his brief in opposition, (pages 12-13).

The Board in this case correctly concluded that these reciprocal, regionally restrictive state statutes, adopted within a few months of each other as part of a concerted campaign to establish a New England banking system, are components of a multi-state compact. As the Board explained (Pet. App. A52), such laws may "be considered to be part of an implied compact or agreement that has never been approved or authorized by

Congress * * *." See also U.S. Steel Corp. v. Multistate Tax Commission, 434 U.S. 452, 470-71 (1978), holding that the Compact Clause reaches "agreements effected through reciprocal legislation," including the "formal as well as the informal."

In these circumstances, the court of appeals had no basis for concluding that the New England Compact should escape congressional supervision. The terms of the Compact Clause of the Constitution are unambiguous (Art. I, § 10, cl. 3): "No State shall, without the consent of Congress, * * * enter into any Agreement or Compact with another State * * *." While it is true that compacts of negligible significance to the welfare of the federal Union may be consummated without congressional approval (Multistate Tax Commission, supra, 434 U.S. at 469), this plainly is not such a situation. As this Court

explained in the Multistate Tax Commission case, "[t]he relevant inquiry must be one of impact on our federal structure." Id. at 471.

While the majority and dissenting opinions of this Court in the Multistate Tax Commission case disagreed about the proper application of Compact Clause principles to the facts of that particular case, they did not disagree about the fundamental principles themselves. In particular, all of the Justices agreed that a multi-state compact would require congressional approval if it disturbed relations among sister states in the federal Union. The majority explained that the Compact Clause requires prior approval if the compact leads "to the increase of political power in the States, which may encroach upon or interfere with the just supremacy of the United States." Id. at 468. The majority further explained that a compact may "neither

project a new presence onto the federal system nor alter any State's basic sphere or authority." Id. at 469 n. 21. Accordingly, the majority carefully considered the question whether the multi-state compact at issue in that case would "redound to the benefit of any particular group of States or to the harm of others." Id. at 477.

The dissenting opinion in the Multistate Tax Commission case also emphasized that a compact that impairs the interests of sister states is forbidden unless explicitly approved by Congress. Justice White pointed out that the majority "appears to recognize that allegations of harmful impact on other States is a cognizable challenge to a compact." Id. at 495. He explained (id. at 495-96):

> "There is no want of authority for the conclusion that encroachments upon non-compact States are as seriously to be guarded against as encroachments upon the federal authority, nor is that surprising in view of the Federal Govern-

> ment's pre-eminent purpose to protect the rights of one State against another. If the effect of a compact were to put non-compact States at a serious disadvantage, the federal interest would thereby be affected as well."

Justice White also described the essential protective role of Congress in reviewing multi-state compacts of concern to excluded states (id. at 496):

> "As the constitutional arbiter of political differences between the States, the Congress is the proper body to evaluate the extent of harm being imposed on non-compact States, and to impose ameliorative restrictions as might be necessary. * * * The Compact Clause is an important, intended safeguard within our constitutional structure. It is functionally a conciliatory rather than a prohibitive clause. All it requires is that Congress review interstate agreements that are capable of affecting federal or other States' rights."

This Court has declared these fundamental principles from the earliest years of our federal Union. See, e.g., Florida v. Georgia, 58 U.S. (17 How.) 478, 494 (1854):

> "By the 10th section of the 1st article of the Constitution, no State can enter into any agreement or compact with another State, without the consent of Congress. * * * This provision is obviously intended to guard the rights and interests of the other States, and to prevent any compact or agreement between any two States, which might affect injuriously the interests of the others. And the right and the duty to protect these interests is vested in the general government."

Accord, Rhode Island v. Massachusetts, 37 U.S. (12 Pet.) 657, 725-26 (1838) (explaining that, "in giving to Congress the power of dissenting to such compacts," the Constitution intended "to guard against the derangement of * * * federal relations with the other States of the Union").

Congress' power of "dissenting" to the effectuation of a compact serves a vital purpose in a case such as this. As the State of New York has explained in its briefs amicus curiae in this Court, the New England Compact

threatens the economic welfare of that State. The compact aggrandizes the political and economic advantages that are withheld from a rival jurisdiction. The compact deliberately imposes an economic handicap on financial institutions in the State of New York -- large and small -- in order to give financial institutions in favored states a head start. No compact could be more antagonistic to the sovereign rights of the State of New York, more contrary to the concept of a common market among co-equal states, or more likely to provoke reprisal and retaliation. And it is for the welfare of the entire federal Union that compacts such as this be submitted to Congress for prior review and approval.

To regard the general language of the hastily-enacted Douglas Amendment as a "renunciation" of Congress' overriding interest in preserving a harmonious union among the

states is entirely misguided. Indeed, it would have been the height of irresponsibility for Congress to "relinquish" its responsibilities through the general language of this amendment, which received almost no debate or discussion before enactment. As Chairman Rodino explained to Speaker O'Neill in his September 14, 1984 letter, appended to petitioners' reply brief in support of certiorari, "[w]hile the Congress has on rare occasions authorized certain compacts in advance, it has done so only after long and thoughtful deliberation of the potential consequences." Chairman Rodino also pointed out that such scrutiny is essential to achieve one of the most important objectives of the Constitution -- "to eradicate internal trade barriers and prevent States from aligning themselves into rival economic coalitions." He also warned that such actions by coalitions of states

would "invite retaliation by States in excluded regions of the country." Id. at A2-A3.

The New England Compact threatens precisely these injuries to the economic welfare of the Nation. It accordingly is essential that the compact be submitted for review and approval by the national legislature. Congress has not yet granted that review and approval, and nothing in the language or history of the Douglas Amendment suggests that it may be dispensed with here.

CONCLUSION

The decision of the court of appeals should be reversed.

Respectfully submitted,

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February 21, 1985